

Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

E.L.A. and O.L.C.,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 2:20-cv-01524-RAJ

**JOINT STATUS REPORT AND
DISCOVERY PLAN**

COMES NOW the parties, by and through their respective counsel of record, and submit this Joint Status Report and Discovery Plan pursuant to the Court's Order Regarding FRCP 26(f) Conference, Initial Disclosures, and Joint Status Report, Dkt. 56.

1. Nature and Complexity of the Case

Plaintiffs E.L.A and O.L.C. assert that Defendant implemented an unprecedented policy, dictated from the highest levels of government, designed to separate families and inflict severe harm on children and parents in order to deter immigrants from unlawfully entering the United States. Plaintiffs assert that Defendant did so intentionally and with the goal of provoking extreme emotional distress. Plaintiffs further assert that Defendant's employees' actions resulted in a traumatic nine-month separation and caused other harm. Plaintiffs also allege that Defendant's employees—who were legally responsible for Plaintiff O.L.C.'s care—were negligent in providing

1 that care and overseeing the shelter where O.L.C. was placed, resulting in his sexual harassment and
 2 other harms.

3 Defendant denies all allegations and contends that jurisdiction is lacking over Plaintiffs'
 4 claims.

5 The parties agree that aspects of this case are non-complex while other issues are relatively
 6 complex. For example, given the nature of Plaintiffs' allegations, Plaintiffs intend to seek
 7 depositions of and records related to several former, high-level government officials who played
 8 critical roles in developing the family separation policy that directly injured each of the Plaintiffs.
 9 Defendants contend that to the extent Plaintiffs intend to seek discovery from current or former
 10 cabinet-level government officials, heads of federal agencies, advisors to the President, or the
 11 President or former President, such discovery should not proceed unless and until Plaintiffs
 12 demonstrate the requisite heightened need for such discovery, and further establish that such
 13 discovery cannot be obtained through some other source that is more convenient and less
 14 burdensome.

15 **2. Joinder of Additional Parties**

16 The parties propose October 7, 2023, as the deadline to join parties. The parties do not
 17 anticipate joining additional parties.

18 **3. Whether Parties Consent to Assignment of This Case to a Magistrate Judge**

19 No.

20 **4. Discovery Plan**

21 **(A) Initial Disclosures**

22 The parties exchanged initial disclosures on February 9, 2021.

23

24

(B) Subject, Timing, and Potential Phasing of Discovery

Plaintiffs anticipate seeking discovery that will include, but is not limited to, the planning, implementation, and operation of the family separation policy by high-level government officials. Plaintiffs will also seek discovery regarding actions taken by lower-level government officials specifically involved in their separation. Plaintiffs will further seek discovery regarding their arrest, detention, and Plaintiff E.L.A.'s removal, as well as Defendant's efforts to return E.L.A. to the United States. In addition, Plaintiffs will seek discovery regarding Defendant's decision to place O.L.C. in Lincoln Hall, a shelter for boys in New York, for nine months after separating him from E.L.A. Plaintiffs will also seek discovery regarding what information Defendant's employees knew about Lincoln Hall's care for youth, past reports of misconduct from the facility, and Defendant's response to multiple reports of sexual misconduct regarding facility staff and O.L.C. Plaintiffs also anticipate seeking third-party discovery targeting Lincoln Hall. Plaintiffs will also seek discovery regarding policies, procedures, and practices regarding all of the issues identified above.

Defendant will seek discovery regarding Plaintiffs' alleged damages including third-party discovery related to Plaintiffs' claim arising from the time O.L.C. spent in the care and control of non-party government contractor Lincoln Hall.

The parties will commence discovery in June 2023, so that fact discovery may be completed by June 2024. Any medical examination of Plaintiffs will be completed before the fact discovery deadline.

The parties anticipate filing a stipulated motion for protective order, *see infra* Para. 4(F). The parties have agreed to an initial 30-day period for rolling document disclosures ("30-Day Disclosure Period"), commencing on the date of the Court's entry of the parties' proposed protective order. During the 30-Day Disclosure Period, Defendant will produce: (1) Common Discovery, defined to include all documents that Defendant disclosed or otherwise produced in

1 *A.P.F. et al. v. United States*, No. 20-cv-00065-PHX-SRB (D. Ariz.), and *C.M. v. United States*, No.
 2 19-cv-05217-PHX SRB (D. Ariz.), that are not specific to the plaintiffs in those two actions, and (2)
 3 documents that specifically relate to Plaintiffs in this case as identified in Defendant's Initial
 4 Disclosures. Plaintiffs will produce documents specifically relating to their allegations in this case.
 5 These disclosures will be made without written discovery requests, and the parties agree to defer all
 6 written discovery requests and other discovery under the Federal Rules until the 30-Day Disclosure
 7 Period concludes.

8 The agreement to make these disclosures is without prejudice to any party's right to seek
 9 additional discovery, though each party reserves the right to object to such additional discovery as
 10 appropriate.

11 The parties agree that expert discovery will commence after the close of fact discovery and
 12 propose the deadlines as noted below, *infra* Para. 6.

13 (C) Electronically Stored Information

14 The parties anticipate voluminous and complex discovery that is stored electronically. The
 15 parties will meet and confer regarding an appropriate protocol regarding discovery of
 16 electronically stored information but anticipate using an ESI protocol similar to one which was
 17 previously adopted in *A.F.P. and J.F.C. v. United States*, No. 1:12-cv-00780-DAD-EPG (E.D.
 18 Cal.), and *C.M. v. United States*, No. 19-cv-05217-PHX SRB (D. Ariz.).

19 (D) Privilege Issues

20 The parties anticipate that certain privilege issues may arise during discovery, including
 21 attorney-client privilege, deliberative process privilege, and law enforcement privilege. The parties
 22 will confer regarding the nature and scope of privilege logs as part of an ESI agreement.

23 The parties agree that disclosures are contingent on execution of privacy waivers that have
 24 been provided to plaintiffs and entry of a protective order, claw-back agreement/Rule 502(d) order,

1 and ESI protocols similar to those used in *A.F.P.* and *C.M.*, modified to conform to the particulars
2 of this case.

3 (E) Proposed Limitations on Discovery

4 The parties agree that the scope of discovery should be consistent with the Federal Rules of
5 Civil Procedure and Local Civil Rules, and proportional to the issues except where otherwise
6 provided or stipulated.

7 However, Plaintiffs anticipate requiring more than 10 depositions to fully prosecute
8 discovery in this case. Plaintiffs' complaint encompasses decision-making by high-level
9 government officials, Plaintiffs' own separation by lower-level officials, and O.L.C.'s time at
10 Lincoln Hall. Each of these different aspects of the case are likely to require several different
11 depositions, and Plaintiffs anticipate requesting the Court to order additional depositions beyond the
12 ten depositions permitted by Federal Rule of Civil Procedure 30 if the parties are otherwise unable
13 to reach an agreement on the number of additional depositions.

14 (F) The Need for Any Discovery-Related Orders

15 The parties anticipate filing a stipulated motion for a protective order that modifies the
16 Western District's model order, pursuant to Local Civil Rule 26(a)(2).

17 5. Parties' Views, Proposals, and Agreements on Items Set Forth in Local Civil 18 Rule 26(f)(1)

19 (A) Alternative Dispute Resolution

20 In 2021, the government engaged in negotiations to globally settle district court cases and
21 pending administrative tort claims arising from family separations at the U.S.-Mexico border.
22 Neither the Plaintiffs in this case nor their counsel were part of those negotiations. No global
23 settlement was reached.
24

1 In their Rule 26(f) conference, the parties discussed the possibility of an ADR event.
 2 Plaintiffs are amenable to engaging in ADR. Defendant believes ADR is premature until
 3 additional discovery is obtained.

4 **(B) The Existence of Related Cases**

5 Plaintiffs are aware of one other related case before this Court: *S.M.F. and A.R.M. v. United*
 6 *States*, No. 2:22-cv-01193-RAJ (W.D. Wash. Aug. 26, 2022). At least 39 other district court cases
 7 currently exist across the country that raise similar Federal Tort Claims Act claims as to those
 8 present in this case. Defendant is prepared to provide the case numbers to the Court upon request.

9 Each case presents individual facts regarding the particular family separations and alleged
 10 damages, and for that reason, the parties do not anticipate that proceedings in this case will interfere
 11 with those in other cases. If such issues do arise, the parties will meet and confer regarding how to
 12 handle such issues and will raise any issues to the Court as necessary.

13 **(C) Phasing of Motions**

14 The parties agree that no phasing of motions is necessary. The parties anticipate filing
 15 motions for summary judgment following the close of discovery.

16 **(D) Preservation of Discoverable Information**

17 The parties acknowledge their duty to take reasonable steps to preserve discoverable
 18 information in the party's possession, custody or control, and have taken steps to comply.

19 **(E) Model Protocol for Discovery of ESI and Alternative to Model Protocol**

20 As noted above, the parties anticipate adopting the ESI protocol similar to one previously
 21 adopted in *A.F.P. and J.F.C. v. United States*, No. 1:12-cv-00780-DAD-EPG (E.D. Cal.), and *C.M.*
 22 *v. United States*, No. 19-cv-05217-PHX SRB (D. Ariz.).
 23
 24

6. Date Discovery Can Be Completed

The parties agree discovery should be completed 120 days before trial. In light of the complexity of the case as described above, the parties request at least 14 months to conduct discovery. Accordingly, the parties propose the following deadlines:

Fact discovery cut-off	June 7, 2024
Expert disclosures	July 18, 2024
Rebuttal expert disclosures	August 16, 2024
Deadline for depositions of rebuttal experts	September 20, 2024
Dispositive and Daubert motions	October 18, 2024
Response briefs	November 16, 2024
Reply briefs	December 13, 2024

7. Bifurcation of Trial

At this time, the parties do not see a need for bifurcating any issues at trial.

8. The Date the Case Will Be Ready for Trial

The parties anticipate that the case will be ready for trial by April 2025.

9. Jury or Non-Jury Trial

Non-jury trial.

10. Number of Trial Days Required

The parties estimate that three weeks, or 15 days, will be required for trial.

11. Trial Date Conflicts

Plaintiffs' Counsel: None.

Defendant's Counsel: None.

12. Corporate Disclosure Statements

Not applicable.

RESPECTFULLY SUBMITTED this 7th day of June, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system.

DATED this 7th day of June, 2023.

s/ Leila Kang